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The New Federal Equity Rules

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tion of the court fails as to them. It seems more consistent that the parties granting intended a release, which, upon the authority of Conn's Heirs vs. Manifee, 2 A. K. Mar. 396, will operate as a bargain and sale if supported by a consideration, or at common law and under the statute, will carry over the possesion without consideration.

From this survey, it appears that the judicial mind has been uniformly obsessed, from the beginning to the present, by the false premise that a deed in any of the forms mentioned in the statute is in itself a conveyance and conveys. In fact, the deed and its efficiency to bring about a transmutation of possession are distinct and separate processes. The deed is essential to set up the conditions under which the statute conveys, and, those conditions being established, the statute alone brings about the conveyance. The deed is the form in which the law requires a contract to convey, executed on one side by payment of the consideration, to be clothed. This being established, the legislature declares through the statute that the actual conveyance takes place. The use of the word "convey" in such a deed can only have the effect to indicate the intention of the parties to have the statute act, which is entirely superfluous, as the statute will act under the proper conditions whether the parties intend it or not. It is the will of the legislature that brings about the conveyance and not that of the parties. The declaration of the legislative intent removes the necessity for any act or ceremony or declaration by the parties. The grantor contracts; the legislature conveys.

THE NEW FEDERAL EQUITY RULES.

The new rules of practice for the United States Courts of Equity, which have been in preparation for more than a year, became effective February 1, 1913. This is one of the most important changes in procedure that has ever been made. Judge Amidon of the District of North Dakota, calls the attention of the profession to the importance of the change in rules:—"The new rules as a whole, constitute a splendid piece of constructive work. They will be a vital force in the courts whose practice they define. After they take effect, counsel cannot safely take a single step in an equity cause without consulting their provisions."

The rules superseded were those of 1842, which have stood almost wholly unchanged for three quarters of a century, although they themselves had been for the most part an elaboration of the first Federal Equity rules adopted in 1822.

The ordinary practitioner has had to brush up his knowledge of this special practice for every case on the equity side in the Federal Courts, doubling his labor. He will scarcely be relieved of this burden by the new rules, though it may be lightened. The rules just adopted tend to simplicity and the elimination of delay by doing away with many of the technicalities which have obstructed the direct,

speedy, and practical administration of justice. Causes will be speeded hereafter where they have been delayed heretofore.

Professir John Wurtz, in the Yale Law Journal, has sketched the changes effected by the new rules:—

"Rule days are abolished, or rather all days except Sundays and holidays are made rule days; subpoenas are returnable when served, and the defendant's appearance as a special proceeding is abolished. The defendant must file his answer twenty days after service of the subpoena, and, as replications are abolished, except in special cases, the cause is then at issue and ready for trial.

"Pleas and demurrers are abolished and with them is removed half of the difficulties besetting the path of the equity practitioners. Gone is the learning respecting answers in support of pleas; gone are the certicates of counsel and the affidavits negativing delay, together with the plaintiffs summary action where they are omitted. So also there is no longer dismissal of the bill for plaintiff's failure to file the general replication or to "set down for hearing."

"A bill is no longer to be dismissed for want of equity, if it shows a legal cause of action, but is to be transferred to the law side of the court.

"The frame of bills is simplified and all bills praying interlocutory relief must be verified. Moreover, a vast saving to litigants, both in costs and in counsel fees, is effected by permitting the joinder of causes of action.

"The defendant is unlimited in the number of his defenses, regardless of consistency. Matters heretofore of plea or demurrer may be set up in the answer, which may also be treated as a cross-bill.

"Exceptions for insufficiency of the answers are abolished and the common-law doctrine of constructive admission by pleading is introduced.

Not the least revolutionary of these rules are those providing that in general the testimony of witnesses shall be taken orally in open court and that appeals shall be heard upon a condensed record.

"Altogether, these rules indicate a most determined effort on the part of the highest court of the land to bring about a reform which the public has long been demanding.